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In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 963

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

AND

LOCAL 845, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

AND

LEROY FRANCIS SIMMS AND FLOYD VAN DEUSEN,
Petitioners,

v.

SOLO CUP COMPANY,
Respondent.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

The Respondent respectfully prays that the Petition for a Writ of Certiorari, heretofore filed in the above entitled matter, to review the judgment of the Court of Appeals of Maryland entered December 7, 1964, be denied.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is unofficially reported in the other following reporting service :

Commerce Clearing House—Labor Relations
50 LC P 51,128;

Bureau of National Affairs—Labor Relations
57 LRRM 2645.

QUESTION PRESENTED

The opinion and decision of the Court of Appeals of Maryland in the within case raises the following question:

Whether a State Court has jurisdiction to entertain a common law tort action for damages sustained as the result of violence during the course of a labor dispute.

REASONS FOR DENYING PETITION

The Petitioners seek to invoke the jurisdiction of this Honorable Court to review the subject decision of the Court of Appeals of Maryland on three grounds:

I. The decision is contrary in both reasoning and result to decisions of this Court.

II. The previous decisions of this Court and of the highest courts of several of the states are ambiguous and in conflict.

III. The previous decisions of this Court and the highest courts of several of the states which distinguish between several classes of "common law tort actions" defeats the legislative purpose and intent of the National Labor Relations Act and serves no valid purpose.

Respondent respectfully submits that an analysis of each of the above arguments reveals that they are devoid of merit and, accordingly, unsustainable. In order to preserve the organization of Petitioners' presentation, we shall discuss each argument in the order in which they are set forth in the Petition for a Writ of Certiorari.

ARGUMENT

I.

The decision is in accord with the previous decisions of this Court in both reasoning and result.

In 195 , this Court filed its decision in the case of *United Construction Workers vs. Laburnum Construction Corp.*[1] This case involved a common-law tort action filed by an employer seeking damages against the union based on the alleged commission of certain threats and acts of violence by several union officers and employees of the company, which employees were also members of the defendant union. The complaint alleged, *inter alia*, that the purpose of the union's conduct was to deprive the company of profits it would otherwise have earned. The Circuit Court of the City of Richmond awarded judgment in favor of the company in the amount of Two Hundred Seventy-Five Thousand Dollars ($275,000.00). On appeal, the Virginia Supreme Court of Appeals affirmed the decision of the lower court, but modified the judgment to One Hundred Twenty-Nine Thousand Dollars ($129,000.00).

This Court granted Certiorari on the question of whether the union's conduct was within the exclusive jurisdiction of the National Labor Relations Board " ' so as to preclude the state court from hearing and determining the issues in a common-law tort action *based upon this conduct* (emphasis supplied)'. 346 U.S. 936, 74 Supreme Court 374."[2] The Court accepted the fact that the company was operating in interstate commerce, within the meaning of the Labor Management Relations Act (Act), and assumed, for the

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[1] 347 U.S. 656, 74 S. Ct. 833 (1954)

[2] *Ibid.*, 347 U.S. 659, 74 S. Ct. 834, 835.

purposes of the case, that the conduct complained of and for which damages were sought to be recovered, constituted an unfair labor practice under Section 8(b) of the Act.[3]

The Union contended that the plenary legislation of Congress granting jurisdiction to the National Labor Relations Board (Board) excluded state courts from entertaining common-law tort actions for recovery of damages. In affirming the decision of the state court, this Court held that the Labor Management Relations Act of 1947 had not given the Board such exclusive jurisdiction over the subject matter of a common-law tort action for damages as to preclude an appropriate state court from hearing and determining it. Issues where such conduct constitutes an unfair labor practice under that Act.

> * * * Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation. To do so will, in effect, grant petitioners immunity from liability for their tortious conduct.[4]

Petitioners claim that three cases, namely *Garner vs. Teamsters, Chauffeurs and Helpers Local Union No. 776*,[5] *Weber vs. Anheuser-Busch, Inc.*,[6] and *San Diego Building Trades Council vs. Garmon*,[7] are contrary in both reasoning and result to the decision of the Maryland Court of Appeals, as well as the *Laburnum* decision, on which the Maryland

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[3] 61 Stat. 140, 29 U.S.C., Sec. 157.
[4] 347 U.S. 663, 664, 74 S. Ct. 837
[5] 346 U.S. 485, 74 S. Ct. 161 (1953).
[6] 348 U.S. 468, 75 S. Ct. 480 (1954).
[7] 359 U.S. 236, 79 S. Ct. 773 (1959).

Court relied. These cases pose no problem and may be easily disposed of.

Weber involved a complaint filed in a Missouri state court seeking an injunction against the union on the premise that the strike conducted by the union constituted a secondary boycott. The state court entered the injunction against the union and its decision was affirmed, on appeal, by the Missouri Supreme Court. This Court granted Certiorari on the question of whether the state court had jurisdiction to enjoin the strike, or whether its jurisdiction had been preempted by the authority vested in the National Labor Relations Board. In reversing the state court decision, this Court held that the activity complained of was solely within the jurisdiction of the Board and the jurisdiction of the state court was thereby preempted. Justice Frankfurter, writing this court's majority opinion, clearly distinguished the facts of the *Weber* case from those cases in which the state court granted relief under the theory that the activities were neither prohibited nor protected, *and noted that the conduct found to exist by the state court was not the conduct that amounted to the kind of mass picketing and overt threats of violence which would give the state courts jurisdiction.*

Garmon involved a complaint by the employer seeking an injunction and damages against the union as a result of certain alleged illegal peaceful picketing. The trial court granted the injunction and awarded $1,000.00 damages for losses found to have been sustained by the employer. On appeal to the California Supreme Court, the judgment of the trial court was upheld. A Petition for Certiorari was filed, granted, and the case was decided with two companion cases.

This Court held that the refusal of the National Labor Relations Board to assert jurisdiction did not vest in the state jurisdiction over activities from which it would otherwise be preempted. However, since it was not clear whether the judgment for damages could be sustained under California law, this Court remanded the case for determination of that single issue. On remand, the court set aside the injunction, in accordance with the mandate, but sustained the award of damages. This Court again granted Certiorari to determine the issue of the jurisdiction, *vel non*, of a state court to award damages arising out of a peaceful union activity which it could not enjoin.

In the majority opinion, written by Justice Frankfurter, this Court held that to allow a state court to award damages against a union for peaceful picketing would be to allow the states a regulatory and governing effect in union conduct, thereby defeating the legislative intent of the several federal labor relations laws, namely, the establishment of a uniform national policy regulating labor relations in industries affecting interstate commerce.

The Court, however, was very careful to distinguish the Garmon case from those cases in which it had allowed the state to grant compensation for the consequences, as defined by the traditional law of courts, of conduct marked by violence and imminent threats to the public order. The Court said, at 359 U.S. 247, 248:

> * * * State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction. We recognize that the opinion in *United Construction Workers vs. Laburnum Construction Corp.*, 347 U.S. 656, etc. found

> support in the fact that the state remedy had no federal counterpart. But that decision was determined as is demonstrated by the question to which review was restricted, by the "type of conduct" involved, i.e., "intimidation and threats of violence." In the present case there is no such compelling state interest.

Garner, supra, arose when an employer filed a bill for an injunction seeking to enjoin *peaceful* picketing as a violation of the Pennsylvania Labor Relations Law. The lower court granted the injunction, but was reversed by the Supreme Court of Pennsylvania on the grounds that the employer's grievance fell within the jurisdiction of the National Labor Relations Board and the state court was thereby preempted. This Court, after granting Certiorari, affirmed, holding that the Congressional action in passing the federal labor relations statutes preempted the jurisdiction of the state courts, and where a private right conflicted with a public one, the latter will prevail.

The Garner case did not, however, overrule the doctrine established in the earlier *Wisconsin*[8] cases. The opinion clearly distinguished the subject facts from cases of "mass picketing, threatening of employees, obstructing streets and highways, or picketing homes."

> * * * We have held that the state still may exercise "its historic powers over such traditionally local matters as public safety and order and the use of streets and highways." (cit. om.) * * *[9]

In delivering the opinion on behalf of the Maryland Court of Appeals, Judge Sybert not only applied the rationale

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[8] *International Union vs. Wisconsin Board*, 336 U.S. 245; *Allen-Bradley Local vs. Wisconsin Board*, 315 U.S. 740.

[9] 346 U.S. 488, 74 S. Ct. 164.

in *Garmon*, but, in fact, relied on the above-quoted wording[10] from that decision in support of his opinion in the subject case. It is respectfully submitted that Petitioners' argument that the decision of the Maryland court would defeat the rationale of this Court set forth in the *Garner* and *Garmon* opinions cannot be sustained by any reading of Judge Sybert's opinion, no matter how strained. The first paragraph of his opinion states the questions before the court as being,

> * * * (W)hether or not the state courts have jurisdiction to entertain a common law tort action for damages for injuries sustained *as the result of violence* in a labor dispute (emphasis supplied).[11]

Additionally, Judge Sybert, in his opinion, specifically answers Petitioners' contention that *Garmon* would preclude state court jurisdiction, wherein he states:

> The Appellees maintain that *Garmon* precludes the state court from entertaining the suit here because there is no longer any imminent threat to public order. But even if it could be assumed that the effects of the actual disorder do not linger, we do not agree that jurisdiction is thus precluded. The significant point is that, at the time of the acts of violence complained of, there was an imminent threat to, and, indeed, disruption of, public order, and under such circumstances the state is vitally interested. * * *[12]

Accordingly, Respondent respectfully submits that the decision of the Maryland Court is entirely in accord with the controlling decisions of this Court, and accordingly, the first argument advanced by Petitioners must fail.

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[10] *Infra*, Pages 6, 7; Petitioners' Appendix, page 5a.

[11] Petitioners' Appendix, page 1a.

[12] Petitioners' Appendix, page 5a.

II.

The previous decisions of this Court and of the highest courts of several of the states are in accord.

Petitioners' second argument in support of its Petition for Certiorari is based on the contention that several decisions of this Court, and of the highest court of several of the states, are uncertain and in direct conflict.

Petitioners discuss the decisions of this Court in the *Laburnum*[13] case and in *International Union vs. Russell*,[14] and, after comparing their interpretation of the *Garmon* opinion, conclude that, "the guiding principles of these cases are uncertain and productive of much litigation."[15] Petitioners then cite seven state court cases which they contend illustrate the conflict between the decisions of this Court and the opinions expressed by the respective states therein.

Respondent respectfully submits that even perusal of the opinions of the seven cases cited by Petitioners fails to indicate such a conflict exists.

In *Blum*,[16] the Plaintiff, a plant manager, instituted a suit against the defendant union for damages arising as a result of certain allegedly libelous material printed in a union publication. One of the defenses raised by the defendant was a preemption of state jurisdiction over the matter by virtue of the National Labor Relations Act. The lower court denied a motion for summary judgment on this

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[13] *Supra.*

[14] 356 U.C. 634, 78 S. Ct. 932 (1958).

[15] Petitioner's Brief, page 13.

[16] *Blum vs. International Association of Machinists, AFL-CIO*, 192 A.2d 842, 80 N.J. Super. 37 (1963).

defense, and an appeal was taken to the Appellate Division of the New Jersey Superior Court. The Court reversed the lower court, holding that the action brought by the Plaintiff was " 'arguably' subject to a §7 or §8 of the federal act . . . ."[17] The court distinguished those cases which arose as a result of violence or threats of violence, however, and discussed the state jurisdiction allowed by *Russell* and *Laburnum*.[18]

In *Fullerton*,[19] an action was brought against the defendant union seeking damages as well as injunctive relief as a result of the union's alleged denial of membership to the Plaintiff and alleged interference with his right to obtain employment. The lower court dismissed the case and the Plaintiff appealed. The California District Court of Appeals affirmed the lower court, holding that under the doctrine in *Garmon* the jurisdiction of the state court was preempted. Again, however, the court distinguished those cases of mass picketing and violence, noting that,

> * * * It is obvious from the court's discussion in *Weber vs. Anheuser Busch, Inc.*, 348 U.S. 468, and the Garmon case, *supra*, that the holding in Russell and Laburnum is limited to controversies involving threats of violence and does not automatically extend to all awards of damages.[20]

Harry S. Goodman, Productions, Inc. vs. Collyer[21] involved a decision by the New York Supreme Court for Queens County which held that a state court had no jurisdiction to entertain a bill for an injunction seeking to

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[17] *Ibid.*, 192 A.2d 848, 80 N.J. Super. 47.

[18] *Ibid.*, 192 A.2d 849, 80 N.J. Super. 48.

[19] *Fullerton vs. International Sound Technicians, etc.*, 15 Cal. Rptr., 451, 194 A.C.A. 848 (1961).

[20] *Ibid.*, 15 Cal. Rptr. 460.

[21] 204 N.Y.S. 2d 1001 (1960).

restrain the defendant union from allegedly threatening radio stations and other communications media which broadcast programs sponsored by the plaintiff. The New York court premised its opinion on the theory that the activities complained of were prohibited by Section 8(b)(4)(ii) of the Act, and were, thereby, exclusively within the jurisdiction of the National Labor Relations Board.

Just as the other cases cited by Petitioner herein are devoid of language to support their argument of conflict with the instant decision, the activities complained of in *Goodman* were not frought with any violence or similar disorder which would bring the case within the area in which the state courts have retained jurisdiction.

The New York Supreme Court for Onondaga County held in *Kominski vs. Western Express Company*[22] that a state court did not have jurisdiction to entertain an action brought by an employee seeking to recover damages against his employer as a result of alleged acts by the employer causing the employee to resign because of his union activity. The court's opinion clearly distinguished *Laburnum* as being "limited to those cases in which the conduct complained of is 'marked by violence and imminent threats to the public order' (cit. om.)"[23]

Similarly, in the *Precision Scientific Co.*[24] case, the Illinois Appellate Court held that a state court had no jurisdiction to entertain that part of an employer's complaint seeking an injunction against a peaceful picketing on the basis of alleged Communist domination of the defendant union and illegality of the purpose of the strike.

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[22] 37 Misc. 2d 992, 234 N.Y.S. 2d 976 (1962).

[23] *Ibid.*, 37 Misc. 2d 993, 234 N.Y.S. 2d. 978.

[24] *Precision Scientific Co. vs. International Union*, 2 Ill. App. 2d 531, 120 N.E. 2d 356 (1954).

However, the Illinois Appellate Court affirmed that portion of the injunction entered by the lower court which restrained intimidation, force and violence.[25]

The *Stork Restaurant*[26] case was an appeal to the Appellate Division of the New York Supreme Court from a lower court decision granting the employer's motion for a temporary injunction to restrain peaceful picketing by employees seeking better working conditions. The *Terrizzi Beverage*[27] case involved an appeal to the Pennsylvania Supreme Court from the issuance, by the lower court, of a temporary injunction enjoining alleged unlawful acts contributing to and culminating in an interference with a contractual relationship.

In both *Stork Restaurant* and *Terrizzi Beverage*, the Pennsylvania courts respectively reversed the lower court decisions, holding that the jurisdiction of the state courts was preempted by the Board. Both cases, however, clearly noted the area in which state court jurisdiction has been sustained; *i.e.*, the area involving violence and public disorder.[28]

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[25] The court refused that part of the injunction referring to "massing and congregating, or collecting in crowds . . . " as being too broad and indefinite. 2 Ill. App. 2d 543, 120 N.E. 2d 362.

[26] *Stork Restaurant, Inc. vs. Fernandez*, 185 N.Y.S. 2d 280, 8 App. Div. 2d 38 (1959).

[27] *Terrizzi Beverage Company vs. Local Union 130, etc.*, 184 A.2d 243 (1962).

[28] In *Stork*, the Court cited *Laburnum* and *Russell* as authority for the jurisdiction of the state court where "the activity complained of has been marked by actual or threatened violence to persons or destruction of property . . . " 185 N.Y.S. 2d 286, 8 App. Div., 2d 43. In *Terrizzi*, the Court said, "There is no doubt that the Pennsylvania courts still retain jurisdiction to enjoin and prevent acts of violence and breaches of the peace, even in a labor dispute. * * * " 184 A.2d 246.

It is respectfully submitted that an analysis of the authorities discussed above, clearly shows that the ambiguity and conflict in the authorities as alleged by Petitioners, does not, in fact, exist and, accordingly, the instant case fails to warrant the consideration of this Court.

III.

The existing decisions of this Court and of the highest courts of the several states should not be overruled.

Petitioners, in their concluding argument, advance three reasons why the existing case law should be overruled, the effect of which would preempt the state courts from *any* jurisdiction over conduct which is "prohibited or protected" by the Act.

First, Petitioner submit that such jurisdiction defeats the purposes of the Act and is "an intrusion upon the enunciated legislative (sic) purpose."[29] This Court has clearly decided to the contrary in *Laburnum* as heretofore discussed herein.[30]

Petitioners' second reason for overruling the existing authorities is completely ludicrous and devoid of merit. Petitioners contend that the distinction allowing the exercise of state court jurisdiction when violence or threat of disorder exists, serves no valid purpose. They premise this argument on the theory that all tort recoveries are private rights, and it is a fallacy to protect some private rights and not others. Albeit an interesting argument, it cannot prevail in this case, since the line between state court jurisdiction and the preemption of that jurisdiction is not

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[29] Petitioners' Brief, page 15.

[30] See discussion of *Garner, supra* at 347 U.S. 664, 665; and discussion of legislative history of the Act of 347 U.S. 666-669.

determined by the "public or private" nature of the right.[31] Additionally, the weakness of the argument is further revealed by Petitioners' acknowledgement that the several states should have jurisdiction in the area of violence and disorder to entertain criminal prosecutions and suits invoking injunctive relief, the latter, in the State of Maryland, being also a completely private right.

Carrying Petitioners' proposition one step further, if the Act were construed to foreclose *all private* remedies for activities or conduct within its ambit, and to allow *all public* ones, the effect would be to vest jurisdiction in all State Labor Boards (public administrative bodies) over any act or conduct which constitutes a tort, notwithstanding the provisions of Section 7 or Section 8 of the Act. This Court has already dealt with that problem and the conflicts which would be raised thereby. *Guss vs. Utah Labor Relations Board*, 353 U.S. 1 (1957).

If, however, *all state jurisdiction* were to be divested as Petitioners suggested in their Memorandum to the Superior

[31] See discussion of public vs private right in opinion of Justice Jackson in *Garner, supra*, 346 U.S. 492-501.

[32] Petitioners' Appendix, p. 16a. Petitioners' Memorandum to the Superior Court actually stated that state courts have jurisdiction over conduct involving violence only where there is a threat or imminent danger of such conduct, and after the act was done or the threat passed, so did state jurisdiction. Respondent submitted, in its brief to the Court of Appeals of Maryland, that a reading, interpretation or application of such a proposition would, for all practical purposes, legalize the user of medieval torture chambers for the purpose of "encouraging" union membership or the burning of company property, for the purpose of enforcing demands for better wages or working conditions. Respondent conceded, however, that under *Petitioners' interpretation* of the existing law, such would be the case only if the company met the jurisdictional standards of the NLRB *and* there was no prior existing injunction.

Court of Baltimore City,[32] the totality of the ensuing lawlessness and disorder which would result defies the imagination.

Additionally, permissible state regulation of preempted areas by means of injunction, *only*, while restricting all complaints seeking damages, would not further the attempt to comply with the desired unifo: . national policy in this area. As Justice Frankfurter noted in *Garmon* at 359 U.S. 246, 247.

> Nor is it significant that California asserted its power to give damages rather than to enjoin what the Board may restrain though it could not compensate. Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered. Such regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the States' salutary effort to redress private wrongs or grant compensation for past harms cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme. • • •

Similarly, Judge Sybert was equally unimpressed as he summarily dismissed Petitioners' argument, by stating:

> The appellees (Petitioners) maintain that Garmon precludes the state court from entertaining the suit here because there is no longer any imminent threat to the public order. But even if it could be assumed that the effects of the actual disorder do not linger, we do not agree that jurisdiction is thus precluded. • • • The appellees (Petitioners') theory is novel. They cite no authority for the proposition that an action to recover for injury resulting from a tort, to be maintainable, must be filed during the continuance of the tort. • • •

> The theory advanced, extended to its logical conclusion, would mean that if violence were discontinued at any stage of the litigation, the suit must perforce be dismissed, only to have the litigious treadmill reactivated or halted at the caprice of those responsible for violence. We do not think the interpretation contended for can reasonably be distilled from the NLRA or the Supreme Court decisions. Application of such a theory would in some cases be tantamount to state condonation of violence during labor disputes.[33]

Petitioners' third reason concludes that the continued permitted maintenance of tort actions as in the case at bar "will break down, erode and undermine the Act.[34] Petitioners present no argument or authority to support this proposition for the obvious reason that the decision of the federal courts, the Board and the courts of the several states are clearly contrary.

CONCLUSION

It is respectfully submitted that for the reasons and upon the authorities set forth herein, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT L. SULLIVAN, JR.,
BARRY I. ROBINSON,
SULLIVAN & PITTLER,
1410 Court Square Bldg.,
Baltimore, Maryland 21202

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[33] Petitioners' Appendix, pages 5a, 6a.

[34] Petitioners' Brief, page 18.